Filed 8/19/13 Baller v. City and County of San Francisco Employee Retirement System CA1/3

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

| | |
|---|---|
| JULIE BALLER,<br>Plaintiff and Appellant,<br>v.<br>CITY AND COUNTY OF SAN FRANCISCO EMPLOYEE RETIREMENT SYSTEM et al.,<br>Defendants and Respondents. | A134194<br><br>(San Francisco County Super. Ct. No. CGC-10-505736) |

This is an appeal from judgment following the trial court's grant of summary judgment against plaintiff Julie Baller, M.D. (Dr. Baller) and in favor of defendants City and County of San Francisco Employee Retirement System (SFERS) and Gary A. Amelio (collectively, defendants) in a lawsuit by Dr. Baller to enforce certain contractual obligations relating to her public employee retirement account. The trial court concluded summary judgment was appropriate because defendants lacked authority under the relevant legal scheme to confer on Dr. Baller contractual rights to acquire certain retirement benefits. For reasons set forth below, we affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Dr. Baller was employed as a public health physician with the City and County of San Francisco (CCSF) from 1980 to 2011. As a CCSF employee, Dr. Baller was a member of SFERS. Under this system, Dr. Baller accumulated service credits for each

year of her employment, which were then used to calculate the amount of pension benefits to which she was entitled upon her retirement.

During the 1970s, before becoming employed with CCSF, Dr. Baller trained and worked as a medical intern/resident at University of California, San Francisco (UCSF), and as an officer with the United States Public Health Service/Indian Health Service. Dr. Baller was not a member of SFERS during these two earlier periods of non-CCSF employment. However, pursuant to the San Francisco Charter and Administrative Code, which provides the legal framework for SFERS, members are entitled to "buy back" service credits for periods of employment in certain designated categories of non-CCSF positions. Relevant here are two such categories – to wit, "Public Service" and "Prior Service" positions. A "buy back" enables a CCSF employee to pay a certain price, which SFERS calculates to be equal to the amount of money the employee would have contributed to its retirement system had the employee been eligible to do so during a particular period of time, plus interest in an amount calculated from the start of that time period until the time of the buy back. Upon SFERS's receipt of the employee's buy-back payment, the employee receives in his or her retirement account service credit for the designated time period.

On December 1, 2010, Dr. Baller filed the operative complaint in this lawsuit asserting three causes of action against defendants: (1) breach of contract and to compel performance; (2) accounting for purposes of assessing damages; and (3) declaratory relief of defendants' contractual obligations. Dr. Baller theorized that, pursuant to valid contracts, defendants are obligated to restore to her certain retirement benefits they had repudiated and, further, they should be estopped from any further act of repudiation.[1]

[1] Defendant Amelio is the Executive Director of SFERS. According to the complaint, "Defendant Amelio, sued herein in his official capacity, has the power and duty to assure that Defendant SFERS complies with its obligations pursuant to the . . . contracts." This court, like the parties, treat defendants Amelio and SFERS collectively for purposes of the issues raised on appeal.

Specifically, Dr. Baller alleged, and defendants do not dispute that, beginning in 2003, she and SFERS entered into a series of written "irrevocable" contracts affording her the right to "buy back" for a set price about four years of "public service" time to be credited to her retirement account. The buy-back contracts covered the period of time during the 1970s that Dr. Baller worked as a UCSF medical intern/resident prior to her 1980 hiring as an employee with the CCSF Department of Public Health with official membership in SFERS.[2]

The first of these written contracts, entitled the "Pre-Tax Service Credit/Shortage Buyback Agreement and Payroll Deduction Authorization," was entered into in March 2003 (hereinafter, "March 2003 contract"). Under the terms of the March 2003 contract, Dr. Baller paid $13,810.09 for the right to receive 2.557 years of service credit for a period of time she worked as a UCSF intern/resident. Although a copy of the agreement is not in the record, defendants do not deny it contained the following standard language also found in other agreements between the parties: "By [Dr. Baller's] election to use pre-tax dollars to buy back service credit or reduce retirement account shortage, this agreement becomes irrevocable and legally binding. Terms and condition of this Agreement cannot be changed regardless of personal or financial hardship during the term of the Agreement." In addition, the contract, as executed by the parties, stated: "I agree and acknowledge that this Agreement is irrevocable."[3] Following a 10-day grace period, the March 2003 contract became final. Dr. Baller thereafter paid the requisite sum and received the additional service credit, which credit was then reflected in her annual benefit statements.

The second of these written contracts, also entitled the "Pre-Tax Service Credit/Shortage Buyback Agreement and Payroll Deduction Authorization," was entered

---

[2] Dr. Baller also entered into a buy-back contract with SFERS in January 2000 with respect to the period of time (4.440 years) that she worked in public service for the United States Public Health Service. This contract, which was never revoked or rescinded, is not at issue in this lawsuit.

[3] A SFERS benefits counselor executed the March 2003 agreement on behalf of SFERS.

into on October 22, 2003 (hereinafter, "October 2003 contract"). Under the terms of the October 2003 contract, Dr. Baller paid $40,265 for the right to receive 4.008 years of service credit for a period of time she worked in public service with both the United States Public Health Service and with UCSF.[4] Like the March 2003 contract, this contract contained the following language: "By [Dr. Baller's] election to use pre-tax dollars to buy back service credit or reduce retirement account shortage, this agreement becomes irrevocable and legally binding. Terms and condition of this Agreement cannot be changed regardless of personal or financial hardship during the term of the Agreement." In addition, Dr. Baller again indicated when executing the contract: "I agree and acknowledge that this Agreement is irrevocable." Following the 10-day grace period, the October 2003 contract, like the March 2003 contract, became final. As before, Dr. Baller paid the requisite sum and received the additional service credit, which credit was thereafter reflected in her annual benefit statements.

In May 2009, SFERS notified Dr. Baller in writing that it was rescinding in part both 2003 buy-back contracts based upon an official audit that had revealed Dr. Baller was not in fact eligible to receive public service credit in her SFERS retirement account for the 3.971 years she worked as a UCSF intern/resident. Specifically, SFERS explained to Dr. Baller in this letter that "[a] settlement agreement dated May 8, 1990 between the City and County of San Francisco Interns and Residents [SFIRA] defined the relationship of Interns and Residents with the City. According to the agreement, Interns and Residents are not employees of [CCSF], making the purchase of such service ineligible under the provisions of San Francisco Administrative Code Section 16.29-15.11." SFERS thus refunded Dr. Baller as taxable income subject to state and federal withholdings the amounts she had originally paid with pre-tax earnings for the 2003 buy backs. Dr. Baller thereafter responded to SFER's notification and refund by filing the aforementioned complaint.

---

[4] Only the service credit with respect to Dr. Baller's work as an intern/resident with UCSF is at issue in this case.

In April 2011, defendants demurred to this complaint, which was overruled, and then filed an amended answer denying Dr. Baller's claims in their entirety. Defendants also asserted several affirmative defenses, including justifiable mistake.

The parties thereafter agreed to submit respective motions for summary judgment in recognition of the fact that the case involved purely legal issues rather than factual issues for the trial court's consideration. Following extensive briefing and a contested hearing, the trial court issued an order on November 7, 2011, granting defendants' motion and denying Dr. Baller's motion. In doing so, the trial court reasoned as follows. First, the trial court found Dr. Baller's prior employment as a UCSF intern/resident does not qualify as either "prior service" or "public service" employment for purposes of the SFERS and, thus, that SFERS lacked authority to grant her service credit based upon that employment. Second, the trial court found there was no legal basis upon which to compel defendants to comply with their contractual promises to grant Dr. Baller this service credit because the underlying contracts were void and unenforceable due to SFERS's lack of authority to enter into them. Lastly, the trial court found no legal basis upon which to find SFERS estopped from correcting its error in entering into statutorily-unauthorized contracts with Dr. Baller. A timely notice of appeal was thereafter filed.

**DISCUSSION**

On appeal, Dr. Baller challenges the trial court's grant of summary judgment in favor of defendants on two grounds. First, Dr. Baller contends that, as a legal matter, the March and October 2003 contracts to buy back 3.971 of service credit for her work as a UCSF intern/resident are valid and enforceable and, thus, that she is entitled to declaratory and other relief based upon defendants' breach of them. Second, Dr. Baller contends in the alternative that, as a matter of equity, SFERS, a public entity, should be estopped from denying its contractual obligations to a public employee. We review her challenges de novo. (*Kasparian v. AvalonBay Communities, Inc.* (2007) 156 Cal.App.4th 11, 18 [a reviewing court considering the propriety of summary judgment must "independently determine whether the parties have met their respective burdens and

whether no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law"].)[5]

## I. Are the March and October 2003 contracts enforceable?

In granting summary judgment in favor of defendants, the trial court found SFERS lacked statutory authority to enter into the March and October 2003 contracts and, thus, was legally entitled to rescind them, because Dr. Baller's work as an intern/resident for UCSF did not qualify as "public service" under the San Francisco Administrative Code (Administrative Code). Dr. Baller contends the trial court misinterpreted the Administrative Code. To determine whether Dr. Baller is correct, we first turn to the relevant Code provisions.

SFERS is a creation of the San Francisco Charter (Charter), which makes the San Francisco Retirement Board (Board) and SFERS "the sole authority and judge . . . as to the conditions under which members of the Retirement System may receive and may continue to receive benefits under the Retirement System," so long as such conditions are "consistent with [San Francisco] Charter and ordinances." (Charter, § 12.100.) The San Francisco Board of Supervisors (Board of Supervisors), in turn, is the governing body responsible for the enactment of such municipal ordinances. Relevant here, Charter section A8.587 authorizes the Board of Supervisors to enact by three-fourths vote an ordinance "crediting as service, rendered as an employee of the federal government and service rendered as an employee of the State of California or any public entity or public agency in the State of California." (Charter, § A8.587-7, subd. (f).) Pursuant to this grant of authority, the Board of Supervisors enacted Administrative Code section 16.55-2 (section 16.55-2), which permits any SFERS member "who was in public service prior to becoming a member [of SFERS]" to purchase service credit for "any part of the time he or she was in such public service." (§ 16.55-2.)

---

[5] Neither party disputes this matter is ripe for final adjudication on summary judgment.

Whether or not Dr. Baller falls within the category of SFERS members permitted under section 16.55-2 to purchase service credit is the crux of this dispute. And the key provision in making this determination is, in turn, Administrative Code section 16.55-1(c) (section 16.55-1(c)), which defines "public service" for purposes of awarding service credit under SFERS.[6] Specifically, the relevant part of section 16.55-1(c) defines "public

---

[6] "Public service" falls within the broader category of "prior service," which, under the relevant legal scheme, may be credited as service in calculating a SFERS member's retirement benefits. The San Francisco Charter sets forth the categories of time and service for which a SFERS member may receive service credit for purposes of calculating his or her retirement benefits. Specifically, Charter section A8.587-7 states: "The following time and service shall be included in the computation of the service to be credited to a member for the purpose of determining whether such member qualifies for retirement and calculating benefits:
"(a) For miscellaneous officers and employees on November 7, 2000 who were members of the Retirement System under Section A8.584, time during which said officers and employees were members under Section A8.584.
"(b) Time during which said member is a member of the Retirement System under Section A8.587 and during and for which said member is entitled to receive compensation because of services as a miscellaneous officer or employee.
"(c) Service in the fire and police departments which is not credited as service as a member under Section A8.587 shall count under this section upon transfer of a member of either of such departments to employment entitling him or her to membership in the Retirement System under "Section A8.587, provided that the accumulated contributions standing to the credit of such member shall be adjusted by refund to the member or by payment by the member to bring the account at the time of such transfer to the amount which would have been credited to it had the member been a miscellaneous member throughout the period of his or her service in either of such departments at the compensation he or she received in such departments.
"(d) Prior service, during which said member was entitled to receive compensation while a miscellaneous member under any other section of the Charter, provided that accumulated contributions on account of such service previously refunded are redeposited with interest from the date of refund to the date of redeposit, at times and in the manner fixed by the retirement board.
"(e) Prior service determined and credited as prescribed by the Board of Supervisors.
"(f) The Board of Supervisors, by ordinance enacted by a three-fourths vote of its members, may provide for the crediting as service, rendered as an employee of the federal government and service rendered as an employee of the State of California or any public entity or public agency in the State of California. Said ordinance shall provide that all contributions required as the result of the crediting of such service shall be made by the member and that no contributions therefor shall be required of the City and County.
"(g) Time during which said member is absent from a status included in Subsections (a), (b) or (c) and for which such member is entitled to receive credit as service for the City and County by

service" as: "(c) Service rendered as an employee . . . of a public agency in the State of California which, with respect to such service, maintained a locally administered defined benefit plan or was entitled to participate in the Public Employees' Retirement System of the State of California under a contract between such public agency and the Public Employees' Retirement System." According to defendants, the clear and unambiguous language of this provision mandates that "Baller may only purchase credit in SFERS for her service as an UCSF resident/intern if, '*with respect to that service*,' UCSF either (1) 'maintained a locally administered defined benefit plan' or (2) 'was entitled to participate in the Public Employees' Retirement System of the State of California.' (§ 16.55-1(c), italics added.)" We agree.

Consistent with defendants' logic, section 16.55-1(c), by its express language, limits "public service" to service rendered by a SFERS member in the course of his or her employment at a California public agency that, *with respect to the member's service for that agency*, maintained a locally administered defined benefit plan or was entitled to participate in California's Public Employees' Retirement System (CalPERS). Here, the undisputed record reflects that UCSF, the relevant public agency, neither maintained the requisite benefit plan nor was entitled to participate in CalPERS *with respect to Dr. Baller's service as an intern/resident on its behalf*. Consistent with this fact, defendants advised Dr. Baller when rescinding in part the March and October 2003 contracts that, pursuant to a 1990 Settlement Agreement between CCSF and SFIRA, San Francisco residents and interns are not granted the status of "employee" with respect to CCSF. As such, defendants advised Dr. Baller, the Settlement Agreement "mak[es] the purchase of [Dr. Baller's] service ineligible under the provisions of San Francisco Administrative Code . . . ," because UCSF, with respect to the service of non-employee

---

virtue of contributions made in accordance with the provisions of Section A8.520 or Section A8.521 of the Charter.

"(h) Time during which said member was on Unpaid Parental Leave pursuant to Charter Section A8.523, and for which said member has purchased service credit in the Retirement System." (Charter, App., § A8.587-7.)

interns and residents, did not maintain the requisite benefit plan or have the right to participate in CalPERS.

Thus, as defendants argue, because "the Administrative Code bars a SFERS member from purchasing credit for service during which the member was not entitled to participate in the other public agency's pension plan," Dr. Baller, who admittedly was not entitled to participate in UCSF's retirement program during the relevant time period, has no right to "buy back" credit for that service.

In asking this court to reject defendants' statutory analysis, Dr. Baller proposes the following alternative analysis: "[UCSF] is, indisputably, 'a public agency in the State of California,' and it did, also indisputably, 'maintain[] a locally administered defined benefit plan' or 'was entitled to participate in' CalPers. These facts are certain even though, *at the time she was an intern/resident, Plaintiff was not entitled to participate in the UCSF retirement program as it was then administered*. In the most direct and logical reading of the Code provision's language, the qualifying factor is whether the public agency maintained such a plan and whether the *agency* was entitled to participate in the State's retirement system for public employees – *not* whether the individual later seeking buy-back rights was herself entitled to participate in the retirement plan at the time of the prior employment." (Emphasis added.)

We disagree with Dr. Baller's position. Specifically, we conclude Dr. Baller's interpretation of section 16.55-1(c) fails to adequately account for the straightforward phrase "with respect to such service." As defendants note, this clear and unambiguous language operates to limit the scope of the defined term, "public service," to the service performed by an employee (or officer) of a California public agency. The agency, in turn, must meet one of two qualifications with respect to "such service" – to wit, the agency must have (1) maintained a locally administered defined benefit plan with respect to the employee's (or officer's) service, or (2) been entitled to participate in CalPERS with respect to the employee's (or officer's) service. Thus, Dr. Baller's alternative interpretation of section 16.55-1(c) must be rejected based upon her failure to adequately

account for a key phrase of the provision.[7] (*Hassan v. Mercy American River Hosp*. (2003) 31 Cal.4th 709, 715-716 [an interpretation rendering statutory language meaningless must be rejected].)

Moreover, applying the correct interpretation of section 16.55-1(c), we conclude Dr. Baller's contract claim was properly rejected by the trial court based upon defendants' lack of authority under the Administrative Code to grant Dr. Baller service credit for the service she performed as an intern/resident with UCSF. The law is clear: "To be valid, administrative action must be within the scope of authority conferred by the enabling statutes. [Citation.]" (*Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 872-873.) "These rules apply to the power of an administrative agency to enter into a legally binding contract or to make enforceable promises. (See *Air Quality Products, Inc. v. State of California* (1979) 96 Cal.App.3d 340 [157 Cal.Rptr. 791] (*Air Quality Products*).)" (*U.S. Ecology, Inc. v. State of California* (2001) 92 Cal.App.4th 113, 132. See also *Los Angeles Dredging Co. v. City of Long Beach* (1930) 210 Cal. 348, 353 ["contracts wholly beyond the powers of a municipality are void" and, thus, "cannot be ratified"].)

Here, the relevant provisions of the Administrative Code, as interpreted above, do not grant SFERS or its agents the authority to make a legally binding contract with a public employee to award service credit for the employee's prior service as an intern/resident at a California institution where, as here, such service does not meet the

---

[7] In her reply brief, Dr. Baller focuses for the first time on the term "which" that precedes the identified phrase "with respect to such service." Specifically, Dr. Baller argues: "The use of the word 'which' at the beginning of the clause, rather than 'who,' indicates that the clause is a modifier that relates to the public agency, *not* to the individual employee. [Thus,] [r]ead properly, Section 16.55-1(c) limits the application of the term 'public service' to employees of certain agencies, not to certain employees of those agencies." We agree with Dr. Baller the term "which" is a modifier relating to the public agency rather than to the individual. However, this fact does not change the separate and equally significant fact, apparent from the clear language of the section 16.55-1(c), that an individual's service for the agency qualifies as "public service" only if the agency, with respect to the individual's service, either maintained a locally administered defined benefit plan or was entitled to participate in CalPERS.

requirements for "public service" under section 16.55-1(c). As such, defendants are correct that the 2003 March and October contracts are void and unenforceable. " 'One dealing with public officers is charged with the knowledge of, and is bound at his peril to ascertain, the extent of their powers to bind the state for which they seem to act. And, if they exceed their authority, the state is not bound thereby to any extent.' [Citation.]" (*Air Quality Products, Inc. v. State of California, supra*, 96 Cal.App.3d at pp. 350-351. See also *San Diego City Firefighters, Local 145 v. Bd. of Admin. Etc.* (2012) 206 Cal.App.4th 594, 609 [an agreement between the City and local union is void as unauthorized where "treating the . . . Agreement as creating retirement benefits would impermissibly conflict with the City Charter because, as we have explained, the City Charter requires that any such benefits be established through ordinance and be approved in a vote of the SDCERS membership"].)

Finally, we add that our conclusion does not change based upon the principle, relied upon by Dr. Baller, that "an administrative agency has the power to contract on a particular matter if this power may be fairly implied from the general statutory scheme." (*U.S. Ecology, Inc. v. State of California, supra*, 92 Cal.App.4th at p. 132. See also *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 824 [' " '[public] officials may exercise such additional powers as are necessary for the due and efficient administration of powers expressly granted by statute, or as *may fairly be implied* from the statute granting the powers' " '].) Where, as here, the extent of the agency's power on a particular matter is clearly defined (and restricted) by codified law, we fail to understand how a greater power could be "fairly implied." Simply put, because SFERS's contractual promises to Dr. Baller of service credit rights were, for all the reasons stated above, inconsistent with its administrative powers under the governing legal scheme, we reject Dr. Baller's request that we simply imply the requisite administrative powers. (*Air Quality Products, Inc. v. State of California, supra*, 96 Cal.App.3d at p. 350 [declining to find an implied grant of authority in the legislative scheme where "the express authorization in the statute for the Board to enter into certain types of contracts suggests

that had the Legislature intended the Board to have the general contractual authority argued for, the statute would expressly so provide"].)[8]

Thus, because the relevant provisions of the Charter and the Administrative Code, properly construed, bar SFERS and its agents from awarding service credit to Dr. Baller for her service as an intern/resident on behalf of UCSF, Dr. Baller cannot enforce defendants' unauthorized contractual promises to award her such credit. (*U.S. Ecology, Inc. v. State of California, supra*, 92 Cal.App.4th at p. 132.) Accordingly, the trial court's ruling on Dr. Baller's contract cause of action stands.[9]

## II. Does the doctrine of equitable estoppel apply?

Dr. Baller relies on the doctrine of equitable estoppel as an alternative basis for holding defendants liable under the March and October 2003 contracts. This doctrine has

---

[8] Dr. Baller insists that "to effectuate the 'statutory scheme' the Section's language should be read, contrary to Defendants' characterization, as permitting buy-backs by employees who worked for such an other agency but were not permitted by that agency to participate in its retirement plan. This interpretation better serves the purposes of the 'statutory scheme' than does Defendants' interpretation [because] Plaintiff's reading gives each employee engaged in public service the right, exercisable on at least one occasion, to pay for and receive retirement credit for her period of such employment." However, Dr. Baller's reasoning has a fatal flaw. As explained above, section 16.55-1(c) does not give all employees the right to buy back retirement credit for their past service for a public agency. Rather, the relevant public agency must have, with respect to the employee's service, maintained a locally administered defined benefit plan or been entitled to participate in CalPERS. Thus, ignoring this statutory restriction and granting all employees the desired buy-back rights would not "effectuate the 'statutory scheme,' " but would contravene it.

[9] Dr. Baller supports her interpretation of section 16.55-1(c) with references to the provision's legislative history, arguing that "the meaning of the entire phrase 'which, with respect to such service' and of the words 'such service,' is, at a minimum, not entirely clear." However, as we have just explained, we find the language quite straightforward. As such, we find no need for resorting to indicia of the Board of Supervisor's intent to properly interpret it. (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977 [where statutory language "is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature"].) And for the same reason, we deny defendants' request for judicial notice of certain documents pertaining to this legislative history filed with this court on June 21, 2012.

four essential elements: "(1) The party to be estopped must be apprised of the facts, (2) he must intend that his conduct shall be acted on, or must so act that the other party has a right to believe it was so intended, (3) the other party must be ignorant of the true state of facts, and (4) he must rely on the conduct to his injury. We have cautioned, however, that the doctrine is not available to 'defeat the effective operation of a policy adopted to protect the public.' [Citation.]" (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 28.)

The trial court rejected equitable estoppel as a basis for enforcing defendants' obligations under the March and October 2003 contracts to credit Dr. Baller's nearly four years of service as a UCSF intern/resident for purposes of calculating her retirement benefit. The trial court reasoned that a public entity could not be estopped from correcting its error in entering into a statutorily-unauthorized contract. We agree with the trial court.

" ' "[T]he doctrine of equitable estoppel may be applied against the government where justice and right require it. [Citation.]" [Citations.] Correlative to this general rule, however, is the well-established proposition that an estoppel will not be applied against the government if to do so would effectively nullify "a strong rule of policy, adopted for the benefit of the public . . . ." [Citation.] The tension between these twin principles makes up the doctrinal context in which concrete cases are decided.' ([*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462,] 493.)" (*Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 868 (*Medina*).) Moreover, while equity may sometimes require a court to estop a public entity from acting or failing to act in a situation implicating the rights of a public employee, "*no court has expressly invoked principles of estoppel to contravene directly any statutory or constitutional limitations*. [Citations.]" (*Longshore v. County of Ventura, supra,* 25 Cal.3d at pp. 28-29 [emphasis added]; see also *Medina, supra,* 112 Cal.App.4th at p. 869 ["principles of estoppel may not be invoked to directly contravene statutory limitations"].) Even more directly on point, "estoppel is barred where the government agency to be estopped does not possess the authority to do what it appeared to be doing. . . . (Cf. *Crumpler v. Board of Administration* [(1973)] 32

Cal.App.3d [567,] 584 [‘Nor may estoppel be avoided on the ground that to invoke it would enlarge the statutory power of the board. In view of the statutory powers conferred upon the board by [the applicable statute], this is not a case where the governmental agency “utterly lacks the power to effect that which an estoppel against it would accomplish.” (*City of Long Beach v. Mansell, supra,* 3 Cal.3d 462, 499)’]; see also *Fleice v. Chualar Union Elementary School Dist*. (1988) 206 Cal.App.3d 886 [254 Cal.Rptr. 54] [estoppel not applied where it was beyond school board’s power to (erroneously) classify second-year teacher as permanent rather than probationary and on that basis grant tenure].)” (*Medina, supra*, 112 Cal.App.4th at pp. 870-871; see also *Emma Corp. v. Inglewood Unified School Dist.* (2004) 114 Cal.App.4th 1018, 1030 [“Estoppel is available against public entities in narrow circumstances, but not if its application would contradict existing statutes”].)[10]

This principle applies squarely to the facts at hand, and bars Dr. Baller’s recovery. Specifically, under this controlling law, defendants, as a matter of law, cannot be estopped from canceling Dr. Baller’s contractual right to service credit for her time spent working as an intern/resident for UCSF and refunding her costs expended to acquire that right because, as explained above, defendants did not possess and have never possessed

---

[10] This well-established case law makes clear that Dr. Baller is mistaken in arguing that “estoppel against the government is barred only where applying it ‘would effectively nullify “a strong rule of policy, adopted for the benefit of the public.” ” Rather, estoppel is also barred where, as here, applying it “would directly contravene statutory limitations.” (*Medina, supra,* 112 Cal.App.4th at p. 869; see also *Emma Corp. v. Inglewood Unified School Dist., supra,* 114 Cal.App.4th at p. 1030.) Dr. Baller is likewise mistaken in arguing “the San Francisco Administrative Code . . . has neither the force nor clarity of a “. . . statutory limitation.” Under the California Constitution, “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Cal. Const., art. XI, § 7.) “Thus, ‘[u]nder the police power granted by the Constitution, counties and cities have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law. (Cal. Const., art. XI, § 7.) Apart from this limitation, the “police power [of a county or city] under this provision . . . is as broad as the police power exercisable by the Legislature itself.” [Citations.]’ [Citation.]” (*Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 1118.)

the statutory authority to grant her that right in the first place. (E.g., *San Diego City Firefighters, Local 145 v. Bd. of Admin. Etc., supra*, 206 Cal.App.4th at p. 610 [a local union's promissory estoppel claim against the City failed where estopping the City from denying the validity of a promise to award retirement benefits would contravene several provisions of the City's Charter]; *San Francisco Internat. Yachting etc. Group v. City & County of San Francisco* (1992) 9 Cal.App. 4th 672, 683-684 ["When there has been no compliance with the relevant charter provision, the city may not be liable in quasi-contract and will not be estopped to deny the validity of the contract"].)

Moreover, given defendants' lack of statutory authority to perform the very act Dr. Baller now asks us to estop them from refusing to perform, "we need not discuss whether the requisite elements of estoppel, such as reliance, were proven, nor whether 'the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.' ([*City of Long Beach v.*] *Mansell*, [*supra*, 3 Cal.3d] at pp. 496-497.)" (*Medina, supra*, 112 Cal.App.4th at p. 871.) Rather, the law requires that we simply affirm the trial court's decision to grant summary judgment in defendants' favor.

Thus, because "[n]o contractual or promissory estoppel 'liability may be assessed against [a state agency]' if the contract or promises were not 'statutorily or constitutionally authorized,' " the trial court's judgment stands. (*U.S. Ecology, Inc. v. State of California, supra*, 92 Cal.App.4th at p. 132.)

## DISPOSITION

The judgment is affirmed.

_____
Jenkins, J.

We concur:

_____
Pollak, Acting P. J.

_____
Siggins, J.